36TH CONGRESS, 2d Session. } SENATE. { REP. COM. No. 295.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1861.—Ordered to be printed.

Mr. BAYARD made the following adverse

REPORT.

[To accompany bill H. R. 356.]

The Committee on the Judiciary to whom was referred House bill No. 356, entitled "An act for the relief of the creditors of Daniel B. Vondersmith," have had the same under consideration, and submit the following report:

The proposed act is objectionable on the ground that it would be an improper and unwise course for Congress to interfere with the judicial decision of questions of law arising on claims of the United States which are disputed on legal grounds before a tribunal which can more properly decide them. Apart from these legal grounds of objection, no evidence is presented which calls for the interposition of Congress on equitable considerations. There appear to be certain judgment creditors who claim the funds which are now in court for distribution among judgments by confession entered in the court of common pleas of Lancaster county, Pennsylvania. They are all junior to the judgment of John F. Schroder against Vondersmith, which was assigned to the United States by Schroder, but at what date is not shown.

The report of the committee of the House assumes this to be immaterial, but though the precise date does not appear, yet the papers show that the assignment of the judgment of Schroder to the United States was made before any of the judgments in favor of other creditors were rendered, or probably any of the debts contracted. It also appears that execution was issued upon this judgment by the United States district attorney, and the land of Vondersmith condemned as subject to its lien before any of the judgments of the other claimants were rendered.

The idea, therefore, of a *secret* lien as intimated in the House report, seems entirely inadmissable. Whether, by law, the United States under the judgment assigned to them are entitled to priority of payment, is a question for the court; nor can your committee find in the papers submitted anything which specifies the grounds on which the fund is claimed by the United States. The rational inference would

seem to be, that as the recognizance into which Schroder had entered had been forfeited, the United States had, in favor of the surety, accepted the judgment which he had taken as counter security to himself against loss, and as the judgment was a lien on property nearly sufficient to pay it, the acceptance of it in case of the surety, was legal and reasonable.

The relief now asked, is on behalf of persons who have no equity against the United States, unless it be supposed that, in all cases, a forfeited recognizance ought to be released. The consideration of none of the judgments appears, and whatever disposition might exist to relieve an innocent surety from the default of his principal, it would be a dangerous and false sympathy to extend this to the case of mere creditors of the principal, without a full knowledge of the nature of their claims, and the time and circumstances under which they were constructed. Had this been a secret lien of the United States, of which the subsequent judgment creditors had no knowledge or means of knowledge, the equity would be strong; but though the idea is suggested that the claim was secret, because the name of Schroder, as plaintiff, alone appeared in the index, it is a mere pretext. The index is a means of reference to the record, and the record would, when the first in order of time of the other judgments was entered, have shown that the judgment of Schroder had been assigned to the United States; and, also, that execution had been issued, and the real estate of the defendent levied upon and condemned as early as August, 1856, whilst the lien of the judgment was in full force.

There being therefore no secrecy as to the ownership of this judgment by the United States, the equity set up is that the defaulting criminal having returned after the forfeiture of the recognizance, been again arrested, tried, and convicted, the United States have sustained no prejudice. If this be an equity, it would exist as strongly in favor of Vondersmith as of his creditors on debts contracted subsequent to the forfeiture of the recognizance. The payment of the costs and expenses of the United States, would form part of the sentence on the conviction of the criminal; but, as the criminal had delayed, by absconding, the sentence against him, and in the meantime had voluntarily confessed judgment, which would be in point of time prior to the sentence, the United States would thus be prevented from fully enforcing the sentence against him. This certainly is prejudicial, and the creditors claiming on debts contracted subsequent to the forfeiture, have shown no equity against the United States. If they have legal priority, that is a question for judicial determination. The committee recommend that the proposed act be rejected.